

year in which a registration statement relating to that class becomes effective under the Securities Act of 1933, or is required to be updated pursuant to section 10(a)(3) of the Act, and, in the case of paragraph (b)(1)(ii), the two succeeding fiscal years; *Provided, however*, That this paragraph shall not apply to the duty to file reports which arises solely from a registration statement filed by an issuer with no significant assets, for the reorganization of a non-reporting issuer into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer, except for changes resulting from the exercise of dissenting shareholder rights under state law.

(d) The suspension provided by this rule relates only to the reporting obligation under section 15(d) with respect to a class of securities, does not affect any other duties imposed on that class of securities, and shall continue as long as either criteria (i) or (ii) of paragraph (b)(1) is met on the first day of any subsequent fiscal year; *Provided, however*, That such criteria need not be met if the duty to file reports arises solely from a registration statement filed by an issuer with no significant assets in a reorganization of a non-reporting company into a one subsidiary holding company in which equity security holders receive the same proportional interest in the holding company as they held in the non-reporting issuer except for changes resulting from the exercise of dissenting shareholder rights under state law.

(e) If the suspension provided by this section is discontinued because a class of securities does not meet the eligibility criteria of paragraph (b) of this section on the first day of an issuer's fiscal year, then the issuer shall resume periodic reporting pursuant to section 15(d) of the Act by filing an annual report on Form 10-K for its preceding fiscal year, not later than 120 days after the end of such fiscal year.

[49 FR 12689, Mar. 30, 1984, as amended at 51 FR 25362, July 14, 1986; 61 FR 21356, May 9, 1996; 72 FR 16956, Apr. 5, 2007; 73 FR 975, Jan. 4, 2008; 76 FR 52555, Aug. 23, 2011]

§ 240.12h-4 Exemption from duty to file reports under section 15(d).

An issuer shall be exempt from the duty under section 15(d) of the Act to file reports required by section 13(a) of the Act with respect to securities registered under the Securities Act of 1933 on Form F-7, Form F-8 or Form F-80, provided that the issuer is exempt from the obligations of Section 12(g) of the Act pursuant to Rule 12g3-2(b).

[56 FR 30068, July 1, 1991]

§ 240.12h-5 Exemption for subsidiary issuers of guaranteed securities and subsidiary guarantors.

(a) Any issuer of a guaranteed security, or guarantor of a security, that is permitted to omit financial statements by §210.3-10 of Regulation S-X of this chapter is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(b) Any issuer of a guaranteed security, or guarantor of a security, that would be permitted to omit financial statements by §210.3-10 of Regulation S-X of this chapter, but is required to file financial statements in accordance with the operation of §210.3-10(g) of Regulation S-X of this chapter, is exempt from the requirements of Section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

[65 FR 51711, Aug. 24, 2000]

§ 240.12h-6 Certification by a foreign private issuer regarding the termination of registration of a class of securities under section 12(g) or the duty to file reports under section 13(a) or section 15(d).

(a) A foreign private issuer may terminate the registration of a class of securities under section 12(g) of the Act (15 U.S.C. 78l(g)), or terminate the obligation under section 15(d) of the Act (15 U.S.C. 78o(d)) to file or furnish reports required by section 13(a) of the Act (15 U.S.C. 78m(a)) with respect to a class of equity securities, or both, after certifying to the Commission on Form 15F (17 CFR 249.324) that:

(1) The foreign private issuer has had reporting obligations under section 13(a) or section 15(d) of the Act for at least the 12 months preceding the filing of the Form 15F, has filed or furnished all reports required for this period, and

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has filed at least one annual report pursuant to section 13(a) of the Act;

(2) The foreign private issuer's securities have not been sold in the United States in a registered offering under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) during the 12 months preceding the filing of the Form 15F, other than securities issued:

- (i) To the issuer's employees;
- (ii) By selling security holders in non-underwritten offerings;
- (iii) Upon the exercise of outstanding rights granted by the issuer if the rights are granted pro rata to all existing security holders of the class of the issuer's securities to which the rights attach;
- (iv) Pursuant to a dividend or interest reinvestment plan; or
- (v) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer;

NOTE TO PARAGRAPH (a)(2): The exceptions in paragraphs (a)(2)(iii) through (v) do not apply to securities issued pursuant to a standby underwritten offering or other similar arrangement in the United States.

(3) The foreign private issuer has maintained a listing of the subject class of securities for at least the 12 months preceding the filing of the Form 15F on one or more exchanges in a foreign jurisdiction that, either singly or together with the trading of the same class of the issuer's securities in another foreign jurisdiction, constitutes the primary trading market for those securities; and

(4)(i) The average daily trading volume of the subject class of securities in the United States for a recent 12-month period has been no greater than 5 percent of the average daily trading volume of that class of securities on a worldwide basis for the same period; or

(ii) On a date within 120 days before the filing date of the Form 15F, a foreign private issuer's subject class of equity securities is either held of record by:

(A) Less than 300 persons on a worldwide basis; or

(B) Less than 300 persons resident in the United States.

NOTE TO PARAGRAPH (a)(4): If an issuer's equity securities trade in the form of American Depositary Receipts in the United States, for

purposes of paragraph (a)(4)(i), it must calculate the trading volume of its American Depositary Receipts in terms of the number of securities represented by those American Depositary Receipts.

(b) A foreign private issuer must wait at least 12 months before it may file a Form 15F to terminate its section 13(a) or 15(d) reporting obligations in reliance on paragraph (a)(4)(i) of this section if:

(1) The issuer has delisted a class of equity securities from a national securities exchange or inter-dealer quotation system in the United States, and at the time of delisting, the average daily trading volume of that class of securities in the United States exceeded 5 percent of the average daily trading volume of that class of securities on a worldwide basis for the preceding 12 months; or

(2) The issuer has terminated a sponsored American Depositary Receipts facility, and at the time of termination the average daily trading volume in the United States of the American Depositary Receipts exceeded 5 percent of the average daily trading volume of the underlying class of securities on a worldwide basis for the preceding 12 months.

(c) A foreign private issuer may terminate its duty to file or furnish reports pursuant to section 13(a) or section 15(d) of the Act with respect to a class of debt securities after certifying to the Commission on Form 15F that:

(1) The foreign private issuer has filed or furnished all reports required by section 13(a) or section 15(d) of the Act, including at least one annual report pursuant to section 13(a) of the Act; and

(2) On a date within 120 days before the filing date of the Form 15F, the class of debt securities is either held of record by:

(i) Less than 300 persons on a worldwide basis; or

(ii) Less than 300 persons resident in the United States.

(d)(1) Following a merger, consolidation, exchange of securities, acquisition of assets or otherwise, a foreign private issuer that has succeeded to the registration of a class of securities under section 12(g) of the Act of another issuer pursuant to §240.12g-3, or

to the reporting obligations of another issuer under section 15(d) of the Act pursuant to § 240.15d-5, may file a Form 15F to terminate that registration or those reporting obligations if:

(i) Regarding a class of equity securities, the successor issuer meets the conditions under paragraph (a) of this section; or

(ii) Regarding a class of debt securities, the successor issuer meets the conditions under paragraph (c) of this section.

(2) When determining whether it meets the prior reporting requirement under paragraph (a)(1) or paragraph (c)(1) of this section, a successor issuer may take into account the reporting history of the issuer whose reporting obligations it has assumed pursuant to § 240.12g-3 or § 240.15d-5.

(e) *Counting method.* When determining under this section the number of United States residents holding a foreign private issuer's equity or debt securities:

(1)(i) Use the method for calculating record ownership § 240.12g3-2(a), except that you may limit your inquiry regarding the amount of securities represented by accounts of customers resident in the United States to brokers, dealers, banks and other nominees located in:

(A) The United States;

(B) The foreign private issuer's jurisdiction of incorporation, legal organization or establishment; and

(C) The foreign private issuer's primary trading market, if different from the issuer's jurisdiction of incorporation, legal organization or establishment.

(ii) If you aggregate the trading volume of the issuer's securities in two foreign jurisdictions for the purpose of complying with paragraph (a)(3) of this section, you must include both of those foreign jurisdictions when conducting your inquiry under paragraph (e)(1)(i) of this section.

(2) If, after reasonable inquiry, you are unable without unreasonable effort to obtain information about the amount of securities represented by accounts of customers resident in the United States, for purposes of this section, you may assume that the customers are the residents of the juris-

diction in which the nominee has its principal place of business.

(3) You must count securities as owned by United States holders when publicly filed reports of beneficial ownership or other reliable information that is provided to you indicates that the securities are held by United States residents.

(4) When calculating under this section the number of your United States resident security holders, you may rely in good faith on the assistance of an independent information services provider that in the regular course of its business assists issuers in determining the number of, and collecting other information concerning, their security holders.

(f) *Definitions.* For the purpose of this section:

(1) *Debt security* means any security other than an equity security as defined under § 240.3a11-1, including:

(i) Non-participatory preferred stock, which is defined as non-convertible capital stock, the holders of which are entitled to a preference in payment of dividends and in distribution of assets on liquidation, dissolution, or winding up of the issuer, but are not entitled to participate in residual earnings or assets of the issuer; and

(ii) Notwithstanding § 240.3a11-1, any debt security described in paragraph (f)(3)(i) and (ii) of this section;

(2) *Employee* has the same meaning as the definition of employee provided in Form S-8 (§ 239.16b of this chapter).

(3) *Equity security* means the same as under § 240.3a11-1, but, for purposes of paragraphs (a)(3) and (a)(4)(i) of this section, does not include:

(i) Any debt security that is convertible into an equity security, with or without consideration;

(ii) Any debt security that includes a warrant or right to subscribe to or purchase an equity security;

(iii) Any such warrant or right; or

(iv) Any put, call, straddle, or other option or privilege that gives the holder the option of buying or selling a security but does not require the holder to do so.

(4) *Foreign private issuer* has the same meaning as under § 240.3b-4.

(5) *Primary trading market* means that:

(i) At least 55 percent of the trading in a foreign private issuer's class of securities that is the subject of Form 15F took place in, on or through the facilities of a securities market or markets in a single foreign jurisdiction or in no more than two foreign jurisdictions during a recent 12-month period; and

(ii) If a foreign private issuer aggregates the trading of its subject class of securities in two foreign jurisdictions for the purpose of paragraph (a)(3) of this section, the trading for the issuer's securities in at least one of the two foreign jurisdictions must be larger than the trading in the United States for the same class of the issuer's securities.

(6) *Recent 12-month period* means a 12-calendar-month period that ended no more than 60 days before the filing date of the Form 15F.

(g)(1) Suspension of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act shall occur immediately upon filing the Form 15F with the Commission if filing pursuant to paragraph (a), (c) or (d) of this section. If there are no objections from the Commission, 90 days, or such shorter period as the Commission may determine, after the issuer has filed its Form 15F, the effectiveness of any of the following shall occur:

(i) The termination of registration of a class of securities under section 12(g); and

(ii) The termination of a foreign private issuer's duty to file reports under section 13(a) or section 15(d) of the Act.

(2) If the Form 15F is subsequently withdrawn or denied, the issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

(h) As a condition to termination of registration or reporting under paragraph (a), (c) or (d) of this section, a foreign private issuer must, either before or on the date that it files its Form 15F, publish a notice in the United States that discloses its intent to terminate its registration of a class of securities under section 12(g) of the Act, or its reporting obligations under section 13(a) or section 15(d) of the Act, or both. The issuer must publish the

notice through a means reasonably designed to provide broad dissemination of the information to the public in the United States. The issuer must also submit a copy of the notice to the Commission, either under cover of a Form 6-K (17 CFR 249.306) before or at the time of filing of the Form 15F, or as an exhibit to the Form 15F.

(i)(1) A foreign private issuer that, before the effective date of this section, terminated the registration of a class of securities under section 12(g) of the Act or suspended its reporting obligations regarding a class of equity or debt securities under section 15(d) of the Act may file a Form 15F in order to:

(i) Terminate under this section the registration of a class of equity securities that was the subject of a Form 15 (§249.323 of this chapter) filed by the issuer pursuant to §240.12g-4; or

(ii) Terminate its reporting obligations under section 15(d) of the Act, which had been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to §240.12h-3, regarding a class of equity or debt securities.

(2) In order to be eligible to file a Form 15F under this paragraph:

(i) If a foreign private issuer terminated the registration of a class of securities pursuant to §240.12g-4 or suspended its reporting obligations pursuant to §240.12h-3 or section 15(d) of the Act regarding a class of equity securities, the issuer must meet the requirements under paragraph (a)(3) and paragraph (a)(4)(i) or (a)(4)(ii) of this section; or

(ii) If a foreign private issuer suspended its reporting obligations pursuant to §240.12h-3 or section 15(d) of the Act regarding a class of debt securities, the issuer must meet the requirements under paragraph (c)(2) of this section.

(3)(i) If the Commission does not object, 90 days after the filing of a Form 15F under this paragraph, or such shorter period as the Commission may determine, the effectiveness of any of the following shall occur:

(A) The termination under this section of the registration of a class of equity securities, which was the subject of a Form 15 filed pursuant to §240.12g-4, and the duty to file reports required

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by section 13(a) of the Act regarding that class of securities; or

(B) The termination of a foreign private issuer's reporting obligations under section 15(d) of the Act, which had previously been suspended by the terms of that section or by the issuer's filing of a Form 15 pursuant to § 240.12h-3, regarding a class of equity or debt securities.

(ii) If the Form 15F is subsequently withdrawn or denied, the foreign private issuer shall, within 60 days after the date of the withdrawal or denial, file with or submit to the Commission all reports that would have been required had the issuer not filed the Form 15F.

NOTE TO § 240.12h-6: The suspension of classes of asset-backed securities is addressed in § 240.15d-22.

[72 FR 16956, Apr. 5, 2007, as amended at 76 FR 52555, Aug. 23, 2011]

§ 240.12h-7 Exemption for issuers of securities that are subject to insurance regulation.

An issuer shall be exempt from the duty under section 15(d) of the Act (15 U.S.C. 78o(d)) to file reports required by section 13(a) of the Act (15 U.S.C. 78m(a)) with respect to securities registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), provided that:

(a) The issuer is a corporation subject to the supervision of the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of any State;

(b) The securities do not constitute an equity interest in the issuer and are either subject to regulation under the insurance laws of the domiciliary State of the issuer or are guarantees of securities that are subject to regulation under the insurance laws of that jurisdiction;

(c) The issuer files an annual statement of its financial condition with, and is supervised and its financial condition examined periodically by, the insurance commissioner, bank commissioner, or any agency or officer performing like functions, of the issuer's domiciliary State;

(d) The securities are not listed, traded, or quoted on an exchange, alternative trading system (as defined in § 242.300(a) of this chapter), inter-dealer

quotation system (as defined in § 240.15c2-11(e)(2)), electronic communications network, or any other similar system, network, or publication for trading or quoting;

(e) The issuer takes steps reasonably designed to ensure that a trading market for the securities does not develop, including, except to the extent prohibited by the law of any State or by action of the insurance commissioner, bank commissioner, or any agency or officer performing like functions of any State, requiring written notice to, and acceptance by, the issuer prior to any assignment or other transfer of the securities and reserving the right to refuse assignments or other transfers at any time on a non-discriminatory basis; and

(f) The prospectus for the securities contains a statement indicating that the issuer is relying on the exemption provided by this rule.

[74 FR 3175, Jan. 16, 2009]

REGULATION 13A: REPORTS OF ISSUERS OF SECURITIES REGISTERED PURSUANT TO SECTION 12

Annual Reports

§ 240.13a-1 Requirements of annual reports.

Every issuer having securities registered pursuant to section 12 of the Act (15 U.S.C. 78l) shall file an annual report on the appropriate form authorized or prescribed therefor for each fiscal year after the last full fiscal year for which financial statements were filed in its registration statement. Annual reports shall be filed within the period specified in the appropriate form.

[62 FR 39767, July 24, 1997]

§ 240.13a-2 [Reserved]

§ 240.13a-3 Reporting by Form 40-F registrant.

A registrant that is eligible to use Forms 40-F and 6-K and files reports in accordance therewith shall be deemed to satisfy the requirements of Regulation 13A (§§ 240.13a-1 through 240.13a-17 of this chapter).

[56 FR 30063, July 1, 1991]